IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 2519 of 2007()

AGAINST THE ORDER DATED 04/08/2007 IN CMP 7114/2007 IN ST.1770/1998 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

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PETITIONER/RESPONDENT/ACCUSED:

SIVASANKARAN NAIR, RESIDING AT NEELETHU HOUSE,
NADAKKAVU MURI, PERINGALA VILLAGE,
KAYAMKULAM (IN PRISON)

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

RESPONDENT/PETITIONER/COMPLAINANT:

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1. THE STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

2. THE SUPERINTENDENT, SPECIAL SUB JAIL, ALAPPUZHA.

3. K.THANKAPPAN, RESIDING AT KUTTIYIL THEKKETHIL VEEDU, EREZHA THEKKUM MURI, PERINGALA VILLAGE, MAVELIKKARA TALUK.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2519 of 2007

Dated this the 6th day of August 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. He has been found guilty, acquitted and sentenced. But the verdict of guilty, conviction and sentence have now become final. The petitioner was sentenced to undergo imprisonment till rising of court. There was a further direction "to pay" an amount of Rs.80,000/- as compensation and in default to undergo S.I for a period of one month. The petitioner was granted time till 25/7/2006 to appear before the learned Magistrate and to pay the compensation amount. The petitioner did not appear before the learned Magistrate. At long last, the accused was apprehended on 31/7/2007. The court sent the accused to prison to execute the default sentence passed against him. Subsequently the relatives of the accused had allegedly approached the complainant and discharged the amount due. Whereupon, the complainant went before the learned Magistrate and reported that the liability has

been discharged by the relatives of the accused. It is further reported that the complainant "is not intending to proceed with the case". Permission was hence sought "to withdraw the above complaint". The learned Magistrate, by the impugned order, rejected the application. Aggrieved by the rejection of the application, the petitioner, who is undergoing imprisonment in default, has approached this court with this Criminal Miscellaneous Case.

2. The learned counsel for the petitioner submits that the complainant having unambiguously admitted before the learned Magistrate that the entire liability to pay compensation has been discharged by the relatives of the accused, the learned Magistrate must certainly have directed immediate release of the petitioner from custody. Default sentence can be executed and can remain only till the payment is made. In the instant case, there was no specific direction to deposit the amount. The direction was only "to pay" the compensation amount to the complainant. If there is default in payment, there can be a sentence of default. The moment, the direction is complied with either by deposit of the amount or by direct payment to the

complainant, the default sentence cannot continue to run. The position is made clear in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16]. The learned Magistrate has not adverted to that aspect of the matter at all. But inasmuch as the complainant has wrongly and inelegantly claimed the relief of withdrawal of the case, the learned Magistrate has dismissed the complaint.

3. I am certainly of the opinion that the impugned order cannot be justified. The complainant has unambiguously admitted before the learned Magistrate that the liability has been discharged by the relatives of the accused, who approached the complainant. Having recorded that the complainant has admitted before court that the liability has been discharged, the only course open to the learned Magistrate was to pass appropriate orders to release the accused from custody forthwith. Resultantly, the accused is unnecessarily languishing in custody notwithstanding the discharge of the liability to pay compensation. He deserves to be set at liberty immediately.

4. In the result:

a) This Criminal Miscellaneous Case is allowed.

b) The petitioner shall forthwith be released from custody as he does not deserve to undergo the default sentence any longer.

c) The registry shall forthwith communicate this order to the prison authorities who are detaining the petitioner who shall immediately release him from custody.

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007